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Congress of the United States
House of Representatives

Washington, DC 20515-1901

May 13, 2004

COMMITTEE ON
ENERGY AND COMMERCE

SUBCOMMITTEES:
ENERGY AND AIR QUALITY
ENVIRONMENT AND HAZARDOUS MATERIALS
OVERSIGHT AND INVESTIGATIONS

DEMOCRATIC AT-LARGE WHIP

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CO-CHAIR

AFFORDABLE MEDICINES
TASK FORCE
CO-CHAIR

Ms. Marianne Lamont Horinko
Assistant Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Ms. Horinko:

On April 21, you appeared before a joint session of the House Energy and Air Quality Subcommittee and House Environment and Hazardous Materials. I would like to follow up our exchange at that time to clarify your answers to my questions.

At the hearing, I asked if you were aware of key decisions in the development of the mercury emissions regulation for coal fired power plants, and you replied that you, as Acting EPA Administrator, did not have a role in the key decisions about what analysis was necessary to complete a defensible rule by the December 15 deadline. You deferred my question to Jeffrey Holmstead, who served under you as Assistant Administrator for Air and Radiation.

Before you began service as Acting EPA Administrator, Administrator Whitman wrote to Members of Congress to assure us that the delayed analysis would be completed. She stated, "All analyses used to support the proposed rule will necessarily be completed by Dec. 15, 2003." Current Administrator Leavitt has repeatedly emphasized that the proposed rule was developed before he arrived at the EPA in December 2003. As I am sure you are aware, Administrator Leavitt told *The New York Times* in March 2004 that "the analysis isn't complete." He told *The New York Times* that he had spent hours in briefings, and that he had "asked for an array of additional analysis to be done."

I am surprised by your apparent lack of attention to the mercury rulemaking process during your time as Acting Administrator. I am further disturbed by the dramatic shift in policy that appears to have occurred during your watch. Your answer to my question on April 21 suggests that you did not adequately oversee policy decisions in the Office of Air and Radiation during your time as Acting EPA Administrator. I write in order to give you the opportunity to explain your actions.

Please answer the following questions for the record:

1. During your time as Acting EPA Administrator, did you seek and did you receive regular updates from Assistant Administrator Holmstead on any progress in developing a mercury emissions regulation? Please provide all written correspondence related to this inquiry.
2. During your time as Acting EPA Administrator, were you aware that the EPA was no longer seeking input on the mercury regulation from the Utility MACT Working Group, which had met 14 times since August 2001 in order to help EPA develop its rule?
3. During your time as Acting EPA Administrator, were you aware that the Office of Air and Radiation was developing a mercury regulation under Section 111 of the Clean Air Act?
4. Did you authorize the Office of Air and Radiation to develop a mercury regulation under Section 111 of the Clean Air Act? If you did authorize the Office of Air and Radiation to develop a rule under Section 111, please provide all analysis upon which you concluded that regulating a hazardous air pollutant under Section 111 would meet the requirements of the Clean Air Act.
5. If you did not authorize the Office of Air and Radiation to develop the section 111 approach, was this approach authorized by the Administrator who preceded you, by the Administrator who followed you, or by officials outside EPA? Were you consulted on this decision during your time as Acting EPA Administrator?
6. Did you review and approve the proposed rule before it was sent to the Office of Management and Budget for review?
7. During your time as Acting EPA Administrator, did you meet with officials of West Associates or Latham & Watkins?
8. Did the EPA do all of the necessary analysis to propose a defensible mercury control rule during your time as Acting EPA Administrator?

I understand that you have decided to leave EPA on June 1, 2004. I would appreciate receiving your answers before you depart. I thank you for your service, and I wish you well in your future endeavors.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Allen", with a stylized flourish at the end.

Tom Allen
Member of Congress